

IN THE CIRCUIT COURT OF TANEY COUNTY, MISSOURI

DARRELL ("TOBY") THOMPSON, and)
KATHLEEN ("KATHY") THOMPSON)

Plaintiffs)

v.)

RESORT SALES MISSOURI, INC.)

SPINNAKER RESORTS, INC.)

Defendants.)

Case No.: 1746-CC00203

ORDER

Having considered Plaintiffs' unopposed Motion to Amend Petition to file Second Amended Petition, the Court hereby ORDERS, ADJUDGES and DECREES that said Motion is GRANTED, and Plaintiffs' Second Amended Petition is deemed filed.


Honorable Judge Growcock

May 21, 2019
Dated

IN THE CIRCUIT COURT OF TANEY COUNTY, MISSOURI

DARRELL THOMPSON, et al.)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1746-CC00203
)	
RESORT SALES MISSOURI, INC., et al.)	
)	
Defendants.)	

**ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT,
AMENDMENT OF PETITION, CLASS CERTIFICATION, APPOINTMENT OF CLASS
REPRESENTATIVE AND CLASS COUNSEL**

WHEREAS, a class action petition was filed in the above-entitled action (the “Action”) on October 13, 2017 and amended as of June 18, 2018; and

WHEREAS, Plaintiffs Darrell and Kathleen Thompson (“Plaintiffs”), are representatives of a proposed class who have alleged that Defendants Resort Sales Missouri, Inc. and Spinnaker Resorts Inc. (“Defendants”) charged a fee, in various amounts, for the preparation of certain documents, which constituted the alleged unauthorized practice of law. As a result, Plaintiffs filed this lawsuit for alleged violations of RSMo. § 484.010, et seq., violations of RSMo. § 407.010, et seq., and for Money Had and Received; and

WHEREAS, Plaintiffs, on behalf of a Settlement Class, and Defendants have entered into a “Stipulation of Class Action Settlement Agreement and Release” dated April 11, 2019 (the “Agreement”), which memorializes the negotiated and agreed-upon settlement of the Action as between a defined Settlement Class and the Defendants, subject to the approval of the Court (“the Settlement”); and

WHEREAS, Plaintiffs have moved for an order granting them leave to file a *Second Amended Class Petition* amending their proposed class definition consistent with the Settlement Class defined in the Agreement; and

WHEREAS, the parties have filed a *Joint Motion for Preliminary Approval of Class Action Settlement, Class Certification, Appointment of Class Representatives and Class Counsel*;

NOW THEREFORE, upon careful consideration of the *Joint Motion for Preliminary Approval of Class Action Settlement, Class Certification, Appointment of Class Representatives and Class Counsel*, and after reviewing the Agreement, and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that,

1. The terms of the Agreement, and the settlement provided therein, are approved preliminarily as fair, reasonable, and adequate to the Settlement Class as defined in the Agreement, subject to further consideration at the Settlement Fairness Hearing described in paragraph 15 below.

2. The definitions set forth in the Agreement are hereby incorporated by reference into this Order (with capitalized terms as set forth in the Agreement).

3. Plaintiffs and Defendants have executed the Agreement in order to settle and resolve the Action as between them and the proposed Settlement Class, subject to approval of the Court.

4. Accordingly, for the purpose of a settlement in accordance with the Agreement, and upon review of the *Joint Motion for Preliminary Approval of Class Action Settlement, Class Certification, Appointment of Class Representatives and Class Counsel*, this Court hereby preliminarily certifies the following class of persons as the "Settlement Class":

All persons or entities who (a) purchased a Missouri timeshare interest from Defendants on or after June 1, 2014, (b) were charged Closing Costs in connection with that transaction, and (c) did not rescind or cancel their timeshare purchase contract.

The Settlement Class includes all persons or entities who were charged such Closing Costs regardless of whether or not the Closing Costs are currently in escrow.

5. Pursuant to the Agreement, and for purposes of the Settlement only, the Court finds preliminarily as to the Settlement Class that:

- a. The Settlement Class is so numerous that joinder of all members is impracticable;
- b. There are questions of law or fact common to the Settlement Class that predominate over questions affecting only individual members of the Settlement Class;
- c. Plaintiffs' claims are typical of those of the members of the Settlement Class;
- d. Plaintiffs and Class Counsel will fairly and adequately represent and protect the interests of the members of the Settlement Class; and
- e. Certification of the Settlement Class as proposed is an appropriate method for the fair and efficient adjudication of the controversies between the Settlement Class and Defendants.

6. For the purpose of this preliminary approval, and for all matters relating to the settlement, until further order of the Court, the Court appoints Plaintiffs as representatives of the Settlement Class and appoints Chandler Gregg at Strong-Garner-Bauer, P.C. as Class Counsel.

7. The Court appoints Angeion Group, LLC as Class Administrator.

8. By this Order, the Court hereby exercises subject-matter and personal jurisdiction over the Settlement Class for purposes of evaluating the final certification of the Settlement Class and the fairness and adequacy of the settlement.

9. The Mailed Notice, as set forth in Exhibit 2 to the Agreement, is hereby approved.

10. The Mailed Notice in a form substantially the same as that set forth in Exhibit 2 to the Agreement shall be mailed by the Class Administrator by first-class mail, postage prepaid, to all members of the Settlement Class. Such mailing shall be made within thirty (30) days of this Preliminary Approval Order.

11. The Agreement contemplates a notice methodology that (a) protects the interests of Plaintiffs, the Settlement Class, and Defendants, (b) is the best notice practicable under the circumstances, and (c) is reasonably calculated to apprise the Settlement Class of the pendency of the Action and proposed Settlement, the Agreement, and the class members' right to opt out and exclude themselves from or object to the proposed settlement. In addition, the Court finds that the notice methodology stated in the Agreement is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice of the proposed settlement and meets all applicable requirements of law, including but not limited to Rule 52.08 and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

12. Prior to the Settlement Fairness Hearing, Class Counsel shall serve and file a sworn statement of a person with knowledge, evidencing compliance with the provisions of this Order concerning the mailing of the Mailed Notice.

13. Any member of the Settlement Class desiring to opt out from the Settlement Class shall submit to the Class Administrator (at the following address: Branson Timeshare Settlement, c/o Angeion Group, 1650 Arch St. #2210, Philadelphia, PA 19103 or by email to BransonTimeshareSettlement@AngeionGroup.com) a request to Opt Out and otherwise complying with provisions below. To be valid, the Opt Out must be **received** on or before thirty (30) days from the date of the Mailed Notice Date. Such Opt Out must be in writing and include (a) the full name of the class member, (b) the address of the class member; and (c) a statement

that the class member is seeking exclusion. Any member of the Settlement Class who does not properly and timely request exclusion from the Settlement Class in full compliance with these requirements shall be included in the Settlement Class.

14. Within ten (10) days after the deadline for submitting Opt Out requests, Class Counsel shall file with the Court a sworn statement listing those persons who submitted timely Opt Out requests. The Parties shall retain the originals of all Opt Outs and shall promptly furnish each other with copies of any Opt Outs that come into their possession.

15. A hearing (the "Settlement Fairness Hearing") shall be held before the undersigned at 11:00 AM, Tuesday, October 15, 2019, in Christian County, Missouri. At the Settlement Fairness Hearing, the Court will consider: (a) the fairness, reasonableness, and adequacy of the settlement; (b) the entry of any final order or judgment in the Action with respect to the Settlement Class; (c) the application for an incentive award for the services rendered by Plaintiffs; (d) the application for attorney's fees and for reimbursement of expenses by Class Counsel; and (e) other related matters. The Settlement Fairness Hearing may be postponed, adjourned, or continued by Order of the Court without further notice to the Settlement Class.

16. To be considered at the Settlement Fairness Hearing, any person desiring to file an objection or other comment on the settlement shall be required to file a written Notice of Objection and a Notice of Intent to Appear with the Court and serve copies of the same on Class Counsel and counsel for Defendants no later than seventy-five (75) days from the Mailed Notice Date. The Objection must state (a) the full name, address, and telephone number of the person objecting; (b) the words "Notice of Objection"; and (c) must set forth in clear concise terms the legal and factual arguments supporting the objection to the proposed settlement agreement. The Objection shall not be valid if it merely objects to the appropriateness of the Action or its merits.

Class Members shall not be entitled to speak at the Settlement Fairness Hearing unless they have filed and served on all counsel of record a timely Notice of Objection and Notice of Intention to Appear pursuant to this paragraph.

17. Class Counsel and Counsel for Defendants shall promptly furnish each other with copies of any objections that come into their possession.

18. Any Settlement Class Member who does not make his or her objection in the manner provided in this Order shall be deemed to have waived any such objection and shall forever be barred from making any objection to the settlement, including but not limited to the propriety of class certification, the adequacy of any notice, or the fairness, adequacy, or reasonableness of the settlement.

19. Any attorney hired by a Settlement Class Member at the class member's expense for the purpose of making an objection shall file his or her entry of appearance on or before ten (10) days before the Final Approval Hearing with service upon Class Counsel and Counsel for Defendants as required by the Missouri Rules of Civil Procedure.

20. Submissions of the Parties relative to the Settlement, including memoranda in support of the Settlement, applications for attorney's fees and reimbursement of expenses by Class Counsel, and any applications for incentive fees payable to Plaintiffs shall be filed with the Clerk of the Court on or before thirty (30) days before Final Approval Hearing.

21. Any Settlement Class Member may appear at the Settlement Fairness Hearing in person, or by counsel if an appearance is filed and served as provided in this Order, and such person will be heard to the extent allowed by the Court. No person shall be permitted to be heard unless such person has, no later than seventy-five (75) days from the Mailed Notice Date, (a) filed with the Clerk of the Court a notice of such person's intention to appear and (b) served

copies of such notice upon Class Counsel and Counsel for Defendants as required by the Missouri Rules of Civil Procedure.

22. All other events contemplated under the Agreement to occur after entry of this Order and before the Settlement Fairness Hearing shall be governed by the Agreement and the Mailed Notice, to the extent not inconsistent herewith. Class Counsel and Counsel for Defendants shall take such further actions as are required by the Agreement.

23. The Parties shall be authorized to make non-material changes to the Mailed Notice so long as Class Counsel and Counsel for Defendants agree and one of the Parties files a notice thereof with the Court prior to the Settlement Fairness Hearing. Neither the insertion of dates nor the correction of typographical or grammatical errors shall be deemed a change to the Mailed Notice.

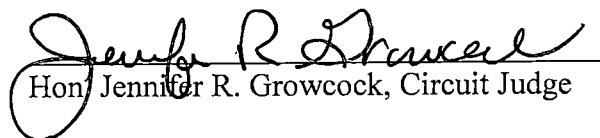
24. If Final Approval of the Settlement does not occur, or if the Settlement does not become effective on or before the Effective Date as provided in the Agreement, or if the Settlement is rescinded or terminated for any reason, the Settlement and Agreement and all proceedings had in connection therewith shall be null and void and without prejudice to the rights of the Parties before the Agreement was made, and this Order and all Orders issued pursuant to the Agreement shall be vacated, rescinded, canceled, annulled and deemed "void" and/or "no longer equitable" for purposes Rule 74.06, as provided in and subject to paragraph 13.1 of the Agreement.

25. Neither this Order, the Agreement, nor any of their terms or provisions, nor any of the negotiations between the Parties or their counsel (nor any action taken to carry out this Order), is, may be construed as, or may be used as an admission or concession by or against any of the Parties or the Released Parties of (a) the validity of any claim or liability, any alleged

violation or failure to comply with any law, any legal or factual argument, contention or assertion, or any claim for sanctions, (b) the truth or relevance of any fact alleged by the Plaintiffs, (c) the existence of any class alleged by the Plaintiffs, (d) the propriety of class certification if the Action were litigated to conclusion rather than settled, (e) the validity of any claim or any defense that has been or could have been asserted in the Action or in any other litigation, (f) that the consideration to be given to Settlement Class Members represents the amount which could be or would have been recovered by any such persons after trial, or (g) the propriety of class certification in any other proceeding or action. Entering into or carrying out the Agreement, and any negotiations or proceedings related to it, shall not in any way be construed as, or deemed evidence of, an admission or concession as to the denials, defenses, or factual or legal positions of Defendants, and shall not be offered or received in evidence in any action or proceeding against any party in any court, administrative agency, or other tribunal for any purpose whatsoever, except as necessary in a proceeding to enforce the terms of this Order and the Agreement; provided, however, that this Order and the Agreement may be filed by the Defendants or any other Released Person to support a defense of res judicata, collateral estoppel, release, waiver, good faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion, or similar defense or counterclaim. Defendants expressly reserve all rights and defenses to any claims and do not waive any such rights or defenses in the event the Agreement is not approved for any reason.

IT IS SO ORDERED.

Date: May 21, 2019


Hon. Jennifer R. Growcock, Circuit Judge